IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
September 26, 2006 Session

STATE OF TENNESSEE v. RICKY RONALD CRAWFORD

Direct Appeal from the Criminal Court for Sullivan County
No. S47,335 Phyllis H. Miller, Judge

No. E2005-02018-CCA-R3-CD - February 1, 2007

A Sullivan County Criminal Court jury convicted the appellant, Ricky Ronald Crawford, of two counts of first degree premeditated murder, and the trial court sentenced him to two consecutive terms of life imprisonment. In this appeal, the appellant claims that the trial court erred by (1) allowing a State witness to testify about the appellant's extramarital affair, (2) not granting the appellant's motion to suppress his statements to police, and (3) ordering consecutive sentencing. Upon review of the record and the parties' briefs, we conclude that the trial court erred by allowing the jury to hear about the appellant's extramarital affair but that the error was harmless and affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which ALAN E. GLENN and J.C. MCLIN, JJ., joined.

Stephen M. Wallace, Blountville, Tennessee, for the appellant, Ricky Ronald Crawford.

Paul G. Summers, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; H. Greeley Wells, Jr., District Attorney General; and Barry Staubus and Robert H. Montgomery, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On December 26, 2002, Kathy Carrico lived at 1827 Highland Street in Kingsport, Tennessee and was physically awakened by her niece's daughter about 5:00 a.m. Carrico went to her window, opened it, and looked down onto her driveway. She heard a woman screaming and saw the woman

running. Carrico also saw a person behind the woman and saw the person shoot the woman in the back. The shooter then walked to the end of the driveway, turned left, and walked down Highland Street. Kingsport Police Officer Mark Flannery was on patrol that morning and heard about a search for a suspect over his police radio. He drove to Highland Street and saw the appellant wearing camouflage and walking toward him. As Officer Flannery got out of his patrol car, he turned on the car's emergency lights. The appellant immediately put his hands on his head, which Officer Flannery thought was unusual. Officer Flannery asked the appellant what was going on, and the appellant calmly stated, "I just shot my wife." Back at 1827 Highland Street, officers found the appellant's estranged wife, Diana Crawford, lying face-down in Kathy Carrico's driveway. She was dead and had been shot twice in the back and once in the head. Officers also found Arthur Blakely, the appellant's uncle, lying partially on the porch of a small house behind Carrico's house. He had been shot once in the head and was near death, and the appellant admitted to Officer Flannery that he also shot Blakely. The appellant told the officer that his wife had left him, had moved in with Blakely, and had been having sex with Blakely. The appellant stated that he had tried to kill himself, but that did not work, so he decided to kill his wife and Blakely and "that's what I did." The appellant led officers to a gun in a wooded area not far from Highland Street. Ballistics tests on the gun, bullets recovered from the victims, and shell casings recovered at the scene of the shootings confirmed that the bullets and shell casings were fired from the gun.

At trial, the evidence established that at the time of the shootings, the appellant and his wife had been married for twenty-five years and had three children. In late November or early December 2002, the appellant's wife moved out of their home, took their two minor children, and moved in with Blakely on Highland Street. Soon after, the appellant's and Diana Crawford's oldest daughter learned that Diana and Blakely were having an affair. On December 9, 2002, the appellant attempted suicide at his wife's and oldest daughter's workplace by cutting his arms "plumb to the bone" with a razorblade. The appellant was immediately admitted to Indian Path Pavilion for a psychological evaluation, was diagnosed with depression, and was discharged on December 16. From December 16 until the day of the shootings, the appellant told at least two people on separate occasions that he was going to kill the victims. Although a psychological expert testified for the appellant that he was suffering from severe depression and bipolar disorder at the time of the crimes, the expert also acknowledged that the appellant's being bipolar would not have prevented him from premeditating or intending to kill the victims. The jury convicted the appellant of two counts of first degree premeditated murder.

II. Analysis

A. Appellant's Extramarital Affair

The appellant claims that the trial court erred by allowing the State to present evidence about his extramarital affair, arguing that the evidence was irrelevant and highly prejudicial. The State contends that the evidence was probative to show that the appellant was not acting in the heat of passion when he killed the victims and was necessary to tell the jury the "whole story" of the appellant's and his wife's relationship in order to negate his crime-of-passion defense. We agree

with the appellant that testimony about the affair was irrelevant. However, in light of overwhelming evidence of the appellant's guilt, the trial court's error was harmless.

During the State's case-in-chief, it requested that it be allowed to question the appellant's oldest daughter, Cynthia Crawford, about the appellant's long-term affair with Michelle Salyers during his marriage to Diana Crawford. The extramarital relationship produced two children, who were eight and thirteen years old at the time of trial. In a jury-out hearing, the State argued that the evidence was relevant because "it goes, one to the nature of the relationship, and it goes to the provocation." The State argued that the jury was entitled to know "the whole relationship of this marriage rather than paint it [as] a perfect blissful union where a man's suddenly shocked . . . to find that his wife would actually leave him and so he gets in a rage and he's bipolar and depressed and he goes and kills her." The trial court agreed, stating that the jury "has a right to hear what this relationship is about" and that the evidence was "highly probative on the issues in this case and it far outweighs any prejudicial effect. This is the rest of the story."

On direct examination by the State, twenty-five-year-old Cynthia Crawford testified that she had two half-brothers as a result of the appellant's long-term relationship with Salyers. She stated that Diana Crawford knew about the relationship, that the appellant brought the boys to the home he shared with Diana, and that Diana treated the boys like her own children. On cross-examination, Cynthia Crawford testified that the appellant was not seeing Salyers in 2002 and that Salyers was living in New Mexico at the time of trial. She also stated that despite Diana Crawford's knowledge of the affair, Diana continued to live with the appellant and never filed for divorce. At the conclusion of Cynthia Crawford's testimony, the trial court instructed the jury that her testimony about the affair had been offered only to tell the jury "the rest of the story" and that it could not be considered as evidence that the appellant had a propensity to commit the crimes.

Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401. However, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Tenn. R. Evid. 403. Tennessee Rule of Evidence 404(b) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity with the character trait. It may, however, be admissible for other purposes." These "other purposes" may include prior acts "admitted to prove such issues as motive, intent, knowledge, absence of mistake or accident, common scheme or plan, identity, completion of the story, opportunity, and preparation." State v. Morris, 24 S.W.3d 788, 810 (Tenn. 2000) (citing Neil P. Cohen et al., Tennessee Law of Evidence § 404.6 (3d ed. 1995)).

In State v. Gilliland, 22 S.W.3d 266, 272 (Tenn. 2000), our supreme court stated that

> when the state seeks to offer evidence of other crimes, wrongs, or acts that is relevant only to provide a contextual background for the case,

> the state must establish, and the trial court must find, that (1) the absence of the evidence would create a chronological or conceptual void in the state's presentation of its case; (2) the void created by the absence of the evidence would likely result in significant jury confusion as to the material issues or evidence in the case; and (3) the probative value of the evidence is not outweighed by the danger of unfair prejudice.

Generally, "[o]nly in an exceptional case will another crime, wrong, or bad act be relevant to an issue other than the accused's character." State v. Luellen, 867 S.W.2d 736, 740 (Tenn. Crim. App. 1992). In making its decision regarding the admissibility of the testimony, the trial court must first determine if the offered testimony is relevant to prove something other than the appellant's character. If the evidence is relevant, then, upon request, the court will proceed to a Rule 404(b) hearing. See State v. Robert Wayne Herron, No. M2002-00951-CCA-R3-CD, 2003 WL 151201, at *2 (Tenn. Crim. App. at Nashville, Jan. 22, 2003) (stating that the admission of prior act testimony must also meet the test for relevancy contained in Tennessee Rule of Evidence 401). A trial court's decision regarding the admission of Rule 404(b) evidence will be reviewed under an abuse of discretion standard; however, "the decision of the trial court should be afforded no deference unless there has been substantial compliance with the procedural requirements of the Rule." State v. DuBose, 953 S.W.2d 649, 652 (Tenn. 1997).

Turning to the instant case, we fail to see how the appellant's long-term affair with Salyers and his having two children with her was relevant to this case. Diana Crawford knew of the affair, accepted the appellant's children with Salyers into her home, and never moved out or filed for divorce because of the appellant's relationship with Salyers. In addition, at the time of the crimes, the appellant's and Salyers' romantic relationship appeared to have ended. The evidence shows that the appellant killed the victims because he was upset that his wife had left him, had moved in with Blakely, and was having an affair with Blakely. The shooter's identity was never at issue, and the State never claimed that the appellant's affair with Salyers was a motive for the killings. The only issue in this case was whether the appellant premeditated and intentionally killed the victims, and the State presented no evidence that the appellant's affair with Salyers had anything to do with the victims' deaths.

Moreover, the absence of evidence about the appellant's extramarital affair would not have created a chronological or conceptual void in the State's case and would not have resulted in jury confusion regarding the shootings. However, even if we were to conclude that evidence about the affair was marginally relevant to complete the story, the fact that a married man would have a long-term affair with another woman, have two children with that woman, and then bring those children into the home he shared with his wife is highly prejudicial. Therefore, Cynthia Crawford's testimony about the affair was inadmissible to complete the story because the factors set out in Gilliland have not been satisfied, and the trial court abused its discretion by ruling that her testimony was admissible. Nevertheless, we conclude that the trial court's error was harmless because the evidence against the appellant is overwhelming. See Tenn. R. App. P. 36(a).

B. Motion to Suppress Statements

Next, the appellant claims that the trial court erred by denying his motion to suppress statements he made to Officer Flannery at the scene and to Detective Mark Mason at the police department. Specifically, he contends that he was in custody and subject to interrogation at the time he made the statements but had not received Miranda warnings. He also contends that even after he received his Miranda warnings, he did not waive his rights. The State contends that the trial court properly denied the appellant's motion to suppress. We agree with the State.

Before trial, the appellant filed a motion to suppress his statements to the police. At the suppression hearing, Officer Flannery testified that in the early morning hours of December 26, 2002, he heard over his police radio that two people had been shot on Highland Street. Officer Flannery went to Highland, and several patrol cars and a fire truck were present. Officer Flannery parked his patrol car two or three houses down from 1827 Highland Street and angled his car so that it blocked the street. Officer Flannery saw the appellant walking in his direction but on the opposite side of the street. He got out of his patrol car and turned on his car's blue flashing lights. The appellant immediately put his hands on his head, which Officer Flannery thought was "strange behavior." Officer Flannery walked up to the appellant and said, "Hey pal, . . . what's going on[?]" and the appellant said, "I just shot my wife." Startled, Officer Flannery said, "What?" and the appellant repeated, "I just shot my wife." Officer Flannery asked the appellant where the gun was, and the appellant told him that he had thrown it in some woods behind a house down the street. Officer Flannery told the appellant to keep his hands on his head and handcuffed him.

Officer Flannery testified that he had a microphone on his left shoulder and that he used the microphone to tell other officers that he had a suspect who claimed to have shot his wife. Officers at the scene of the shootings radioed back and asked where Officer Flannery was located. Officer Flannery told them his location, and then someone asked him over the radio if the suspect was Ricky Crawford. The appellant overheard the question and said, "I'm Ricky Crawford." Officer Flannery had not asked the appellant his name but radioed back that the suspect was Ricky Crawford. An officer then asked over the radio "did he shoot . . . the man too[?]" The appellant again overheard the question and said, "I shot him too. . . . I shot my wife and I also shot her boyfriend Arthur Blakely." Officer Flannery radioed back that the appellant said he shot both victims. Officer Flannery told the appellant that children lived in the area and that the police needed to find the gun before the children found it. The appellant agreed to take Officer Flannery to the weapon, and Officer Flannery gave Miranda warnings to the appellant. The appellant said that he understood his rights and again stated that he would lead Officer Flannery to the gun.

Officer Flannery testified that the appellant did not appear to be under the influence of alcohol or drugs, was very calm, and appeared "normal." Officer Flannery and two other officers walked with the appellant north on Highland Street, and the appellant told Officer Flannery that he shot the victims because his wife had moved in with his uncle and they were having sex. The officers and the appellant turned left onto Pierce Street, and the appellant showed them the gun, which was in the woods behind a house at 1634 Pierce Street. Officer Flannery noticed that the

appellant was shivering, asked if he was cold, and asked how long he had been outside. The appellant told him that he was cold and had been outside since two o'clock. After the appellant led the officers to the gun, another officer put the appellant into the back of a patrol car and took him to the police department.

On cross-examination, Officer Flannery acknowledged that when he first arrived at the scene, he knew that a shooting had taken place and that two people had been shot. He stated that he asked the appellant where the gun was "solely for my protection. I wanted to make sure he didn't have it on him." When the appellant overheard the questions on the police radio, the appellant relayed his responses to Officer Flannery and Officer Flannery relayed the answers to the officer. Officer Flannery did not ask the appellant the questions, and the appellant did not speak into the microphone. After Officer Flannery recited Miranda warnings to the appellant, he asked the appellant if he understood his rights but did not ask the appellant if he wanted to waive those rights. He also asked the appellant if, after hearing Miranda warnings, he still wanted to lead the officers to the gun, and the appellant said yes.

Kingsport Police Detective Mark Mason testified that on December 26, he was called to the police department to assist with the investigation. When he arrived, the appellant was in the hallway, and Detective Mason took the appellant to an interview room. Detective Mason stated that he had been advised that another officer had read Miranda warnings to the appellant before the appellant was brought to the police department. The appellant was not wearing handcuffs, and Detective Mason wiped a swab from a gunshot residue kit over the appellant's hands. He also asked the appellant some questions, such as the caliber of the gun and the number of rounds fired, in order to fill out a form that was in the gunshot residue kit. He then prepared to interview the appellant formally and read the appellant Miranda warnings from a waiver of rights form. The appellant signed the portion of the form that stated he understood his rights. However, the appellant refused to sign the portion of the form that stated he waived those rights, and he requested an attorney. At that point, Detective Mason filled out an arrest report form and asked the appellant background questions such as his date and place of birth and the time of his arrest. While answering those questions, the appellant voluntarily told Detective Mason details about his suicide attempt, his wife's taking out orders of protection against him, his seeing "hickies on her neck," details about the shooting, and why he shot the victims.

On cross-examination, Detective Mason testified that Officer Flannery may have been the officer who told him that the appellant had been read Miranda warnings at the scene, but Detective Mason could not be sure. He acknowledged that he asked the appellant questions for the form in the gunshot residue kit before he re-Mirandized the appellant. He stated that once the appellant asked for a lawyer, he stopped asking the appellant questions about the crimes but had to ask him some personal information questions in order to fill out the arrest report form.

The appellant argued to the trial court that it should suppress his statements to the officers. In support of his argument, he contended (1) that he was in custody when he put his hands on his head and should have received Miranda warnings before Officer Flannery asked him about the gun;

(2) that his statement to Officer Flannery about the location of the gun did not fall under the public safety exception to Miranda; (3) that the questions he heard on Officer Flannery's police radio after he was handcuffed but before he was read his rights constituted a custodial interrogation; (4) that even after Officer Flannery advised him of his rights, Officer Flannery never asked him if he wanted to waive those rights, and his silence did not constitute a waiver; (5) that Detective Mason failed to advise him about his rights before the detective asked him inculpatory questions for the form in the gunshot residue kit; and (6) that Detective Mason improperly continued to question him after he had invoked his right to remain silent and his right to counsel.

The trial court held that the appellant was not in custody when he told Officer Flannery that he had just shot his wife and that Officer Flannery's asking the appellant about the location of the gun was proper because it was for the officer's safety. The trial court also held that the questions asked over the police radio were not improper because they were not asked for the purpose of eliciting a response from the appellant. The trial court further concluded that when Officer Flannery read Miranda warnings to the appellant, "there was absolutely no indication of anything other than a knowing voluntary waiver of his rights." Thus, the trial court found that the appellant's statements to officers while he led them to the gun and that the appellant's showing them the gun did not violate his constitutional rights. As to the appellant's initial statements to Detective Mason, the trial court held that the appellant had already been Mirandized by Officer Flannery and had waived his rights when he made the statements about the number of shots fired and the caliber of the weapon. However, the trial court concluded that anything the appellant said about the crimes after he told Detective Mason that he wanted an attorney should be suppressed. At trial, Officer Flannery's testimony was essentially the same as his suppression hearing testimony, and the State did not call Detective Mason to testify.

In reviewing a trial court's determinations regarding a suppression hearing, "[q]uestions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). Thus, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. Nevertheless, appellate courts will review the trial court's application of law to the facts purely de novo. See State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001). Furthermore, the State, as the prevailing party, is "entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Odom, 928 S.W.2d at 23. Moreover, we note that "in evaluating the correctness of a trial court's ruling on a pretrial motion to suppress, appellate courts may consider the proof adduced both at the suppression hearing and at trial." State v. Henning, 975 S.W.2d 290, 299 (Tenn. 1998).

In Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966), the United States Supreme Court held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." These procedural safeguards require that police officers must advise a defendant of his or her right to

remain silent and of his or her right to counsel before they may initiate custodial interrogation. State v. Sawyer, 156 S.W.3d 531, 534 (Tenn. 2005). If these warnings are not given, statements elicited from the individual may not be admitted in the prosecution's case-in-chief. Stansbury v. California, 511 U.S. 318, 322, 114 S. Ct. 1526, 1528 (1994). A waiver of constitutional rights must be made "voluntarily, knowingly and intelligently." Miranda, 384 U.S. at 444, 86 S. Ct. at 1612. In determining whether a defendant has validly waived his Miranda rights, courts must look to the totality of the circumstances. State v. Middlebrooks, 840 S.W.2d 317, 326 (Tenn. 1992).

"Custodial" means that the subject of questioning is in "custody or otherwise deprived of his freedom by the authorities in any significant way." Miranda, 384 U.S. at 478, 86 S. Ct. at 1630. Our supreme court has expanded this definition of custodial to mean "whether, under the totality of the circumstances, a reasonable person in the suspect's position would consider himself or herself deprived of freedom of movement to a degree associated with a formal arrest." State v. Anderson, 937 S.W.2d 851, 855 (Tenn. 1996). However, the Court has also held that a person detained temporarily for a traffic stop, even one investigating intoxication, is not "in custody" for the purposes of Miranda. Berkemer v. McCarty, 468 U.S. 420, 104 S. Ct. 3138 (1984); see State v. Roger Odell Godfrey, No. 03C01-9402-CR-00076, 1995 Tenn. Crim. App. LEXIS 226, at **5-7 (Knoxville, Mar. 20, 1995) (relying on Berkemer and holding that a police officer's investigating an accident and asking a defendant whether he had been drinking did not violate Miranda). "Interrogation 'refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect.'" State v. Sawyer, 156 S.W.3d 531, 534 (Tenn. 2005) (quoting Rhode Island v. Innis, 446 U.S. 291, 298, 100 S. Ct. 1682, 1689-90 (1980)). Additionally, interrogation consists of "any 'practice that the police should know is likely to evoke an incriminating response from a suspect.'" Id. However, "[t]here is a difference between police initiated custodial interrogation and communications, exchanges, or conversations initiated by the accused himself." State v. Land, 34 S.W.3d 516, 524 (Tenn. Crim. App. 2000).

Turning to the instant case, the appellant claims that by walking toward Officer Flannery with his hands on his head, he was surrendering to authority and was in custody when he told Officer Flannery, "I just shot my wife." We disagree. Although Officer Flannery had turned on his patrol car's emergency lights and the appellant had put his hands on his head, Officer Flannery had no idea that the appellant was involved in the shootings. Although Officer Flannery asked the appellant what was going on, this type of questioning does not give rise to a conclusion that the appellant was "in custody" for Miranda purposes.

We also disagree with the appellant's claim that Officer Flannery's asking him, "Where's the gun?" did not fall under the public safety exception to Miranda. In New York v. Quarles, 467 U.S. 649, 658-59, 104 S. Ct. 2626, 2633 (1984), the United States Supreme Court recognized that questions necessary to secure an officer's safety or the safety of the public are an exception to Miranda. When Officer Flannery arrived at the scene, he knew that a shooting had taken place and that two people had been wounded. Moreover, the appellant was walking toward Officer Flannery and had just stated that he shot his wife. We conclude that Officer Flannery could ask the appellant

about the location of the gun for the officer's safety.

Regarding the appellant's answering questions he heard over the police radio, we also conclude that these questions did not violate the appellant's constitutional rights. When the appellant made the statements, he had been handcuffed and was in custody. However, officers at the scene of the shootings were asking the questions to Officer Flannery over the radio. They were speaking directly to Officer Flannery, not the appellant, and Officer Flannery did not relay the questions to the appellant. The appellant, overhearing the questions, spontaneously stated that he was Ricky Crawford and had shot Arthur Blakely. In our view, there is no indication that the other officers, who had not seen the appellant's actions or demeanor and knew very little about the circumstances of his arrest, should have known that questions directed to Officer Flannery were reasonably likely to be overheard by the appellant and elicit incriminating statements from him. See Innis, 446 U.S. at 301-02, 100 S. Ct. at 1690 (stating that "since the police surely cannot be held accountable for the unforeseeable results of their words or actions, the definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response"). Therefore, the trial court properly concluded that the appellant's answers to the questions were admissible.

As to statements the appellant made to Officer Flannery after Officer Flannery read him Miranda warnings, we conclude that the appellant waived his rights, talked with Officer Flannery, and led police officers to the murder weapon. As the appellant notes in his brief, "mere silence is not enough" to waive Miranda rights. North Carolina v. Butler, 441 U.S. 369, 373, 99 S. Ct. 1755, 1757 (1979). However, an express written or oral statement of waiver also is not required. Id.; State v. Reginald L. Edmonds, No. 02C01-9708-CC-00334, 1998 Tenn. Crim. App. LEXIS 895, at *15 (Jackson, August 25, 1998) (stating that "an express written or oral waiver of a defendant's Miranda rights is not necessary to establish a valid waiver"). As this court has explained, "Lack of an explicit written waiver of the right to remain silent or the right to counsel after Miranda warnings does not per se require exclusion of a confession if waiver can be found from facts and surrounding circumstances." State v. Elrod, 721 S.W.2d 820, 823 (Tenn. Crim. App. 1986). Officer Flannery testified that he read Miranda warnings to the appellant and asked the appellant if he understood them. The appellant said yes. Officer Flannery then asked the appellant if he still wanted to show him the gun, and the appellant again said yes. Officer Flannery stated that the appellant was calm and did not appear to be under the influence of drugs or alcohol. Accordingly, we conclude that nothing in the record preponderates against the trial court's holding that Officer Flannery sufficiently apprised the appellant of his rights and that the appellant knowingly and voluntarily waived his rights. That said, when Detective Mason asked the appellant questions in order to fill out the form in the gunshot residue kit, the appellant had voluntarily waived his right to remain silent. "Our law recognizes that an accused need not be given repeated Miranda warnings once he has been advised of his rights and has waived them." State v. Pride, 667 S.W.2d 102, 104 (Tenn. Crim. App. 1983).

Finally, the appellant contends that the trial court improperly concluded that statements he made to Detective Mason about the crimes after he had invoked his rights to remain silent and to an attorney were admissible. However, our review of the suppression hearing transcript shows that the

trial court ordered that those statements be suppressed. The trial court stated,

> but at any rate that one is suppressed about the hickey's on her neck and how he loved her and the three orders of protection and all of that and the shooting the guy on the porch and her further down the driveway. And about when it occurred, the question about when it occurred, the answer to that's suppressed.

In any event, none of the appellant's statements to Detective Mason were introduced into evidence at trial. Therefore, the appellant is not entitled to relief.

C. Consecutive Sentencing

Finally, the appellant claims that the trial court erred by ordering consecutive sentencing. He contends that although the trial court claimed to order consecutive sentencing on the basis that he is a dangerous offender, the court's comments reveal that it really ordered consecutive sentencing because it was concerned about his release eligibility. Moreover, he argues that protecting the public is not necessary because he will be over one hundred years old when he finishes serving even one sentence. The State contends that consecutive sentencing is appropriate in this case. We agree with the State.

At the appellant's sentencing hearing, the sole issue was whether the appellant should serve his sentences consecutively. No witnesses testified, but the State introduced the appellant's presentence report into evidence. According to the report, the then fifty-one-year-old appellant dropped out of high school after completing the eighth grade. He did not obtain his general equivalency diploma (GED) but obtained a welding certificate in Ohio. He described his physical health as "fair"and stated that he suffered from high blood pressure. He denied current use of illegal drugs but stated that he used marijuana, quaaludes, and valium in the past and that he sought counseling from Frontier Health in the mid-1990's due to depression and family problems. The report shows that the appellant has been convicted of many offenses since he was eighteen years old, including larceny, burglary, selling a Schedule IV drug, selling a Schedule II drug, stalking, vandalism, and violating the driver's license law. He was also adjudicated delinquent of several offenses in an Ohio juvenile court.

Recalling the facts of this case, the trial court noted that the crimes were "extensively planned"; that the appellant first shot Arthur Blakely; and that the appellant chased-down Diane Crawford, shot her in the back, and shot her in the head as she was lying on the ground. The court noted that the appellant had been charged with vandalism, stalking, and telephone harrasment during his relationship with Michelle Salyers; that Salyers had obtained an order of protection against him; and that Diane Crawford had an order of protection against the appellant at the time of her death. The court concluded that the appellant was controlling, "very mean and violent," and that "an extended sentence is necessary to protect the public against further criminal conduct by the defendant." The trial court also concluded that consecutive sentencing reasonably related to the

severity of the offenses, stating,

> These were not two murders committed in the heat of passion. He didn't find them in bed together, he didn't just suspect it, find them in the bed together, run out of the room, grab a gun, go back and kill them or pull one out of his pocket and kill them, it was calculated, it was planned over a good long period of time, just all he lacked was searching out, finding out where she was, lying in wait for her and then the bullet to the head after she was on the ground, that's unbelievable.

Appellate review of the length, range, or manner of service of a sentence is de novo. See Tenn. Code Ann. § 40-35-401(d). In conducting its de novo review, this court considers the following factors: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on enhancement and mitigating factors; (6) any statement by the appellant in his own behalf; and (7) the potential for rehabilitation or treatment. See Tenn.Code Ann. §§ 40-35-102, -103, -210; see also State v. Ashby, 823 S.W.2d 166, 168 (Tenn. 1991). The burden is on the appellant to demonstrate the impropriety of his sentences. See Tenn.Code Ann. § 40-35-401, Sentencing Commission Comments. Moreover, if the record reveals that the trial court adequately considered sentencing principles and all relevant facts and circumstances, this court will accord the trial court's determinations a presumption of correctness. Id. at (d); Ashby, 823 S.W.2d at 169.

Tennessee Code Annotated section 40-35-115(b)(4) provides that a trial court may impose consecutive sentences if a defendant is convicted of more than one offense and the trial court finds by a preponderance of the evidence that "[t]he defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high." In State v. Wilkerson, 905 S.W.2d 933, 938 (Tenn. 1995), our supreme court held that satisfying Tennessee Code Annotated section 40-35-115(b)(4), by itself, is not sufficient to sustain consecutive sentences. If the defendant is found to be a dangerous offender under the statute, the trial court must also determine whether the sentences imposed are reasonably related to the severity of the offenses and necessary to protect the public from further criminal activity by the defendant, the "Wilkerson factors." Id. Moreover, trial courts must make specific findings regarding these factors before imposing consecutive sentences. State v. Lane, 3 S.W.3d 456, 461 (Tenn. 1999).

The trial court in the instant case specifically addressed the Wilkerson factors and made specific findings regarding those factors. We agree with the trial court that the appellant qualified as a dangerous offender and that consecutive sentencing is appropriate in this case.

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgments of the trial court.

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NORMA McGEE OGLE, JUDGE